

SPECIAL CIVIL APPLICATION NO. 5622 OF 1996  
with  
Special Civil Application Nos. 5768 of 1996  
to  
5775 of 1996

Date of decision: 9.4.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

M/s. R.M. Chhaya & A.H. Desai for petitioners.  
Mr. T.H. Sompura, A.G.P. for respondent Nos.1 to 3.  
Mr. Ravi R. Tripathi for respondent No.4.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.  
April 9, 1997.

Common oral judgment:

Since common questions of law and facts are involved, all the petitions are disposed of by this common judgment.

The petitioners are allottee occupants of the shops constructed by Modasa Nagarpalika on a piece of land allotted by government through Collector, Sabarkantha vide order dated 27.2.1974. That the respondent No.4 Modasa Nagarpalika constructed a shopping centre and allotted to the petitioners as tenants and the petitioners are enjoying possession since 1980. According to respondents No.1 and 2, the said construction amounts to encroachment on public road since it is in contravention of the Ribbon Development Rules and requires removal consequently served notices annexure A collectively dated 20.7.1996 requiring the petitioners to remove the construction within four days failing which would be removed by respondents at their cost. Aggrieved by said notices, the petitioners have approached this Court invoking writ jurisdiction.

Respondents have appeared and resisted and have filed affidavit in reply with relevant documents. The respondent No.4 has stated that the Nagarpalika does not have any alternative land and if Government allots some other land then the petitioners can be accommodated. The respondents No.1 and 2 have contended that right from the initial stage, shops in question have been constructed in violation of Ribbon Development Rules and since the road is to be widened, the construction which is an obstruction is required to be removed.

During the course of hearing, with a view to find out amicable solution, all the concerned officers were called in Court and various proposals were moved by either of the parties. In light of detailed discussion and considering rival contentions, the petitions are disposed of as under:

In case of shops No. 39 and 40 with its first floor construction, a major portion, almost entire, is to be demolished. In case of other shops, only a portion of the construction is to be removed. Therefore, in cases of shops where only a part of construction is to be demolished in implementation of the impugned notices, the respondent No.4. Modasa Nagarpalika, is directed to extend the existing construction from its rear side in the margin available. In other words, applying push back theory, the existing construction is to be extended from back side in the open space available, of course, having regard to the rules and regulations. The said extension is to be undertaken at the cost of the petitioners.

Mr. Tripathi, learned advocate for the respondent No.4,

submits that Modasa Nagarpalika has approached the Government for allotment of another piece of land for construction of shopping centre and allotment to needy persons. He further makes a statement that in the event such a proposal materialises and shopping centre is constructed the occupants of shops No.39 and 40 with first floor occupant will be given top and preferential priority for allotment of shops on auction basis. Till the aforesaid proposal materialises the occupants of shops No.39 and 40 and occupants of first floor thereof will be at liberty to occupy and use remaining portion available from the total area of shops after demolition of the disputed construction.

The petitions stand disposed of and allowed to the aforesaid extent. Rule is made absolute accordingly. Interim relief stands vacated. No order as to costs.